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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,069	07/14/2003	Reuben Brock	NOR-1115	6962
37172	7590	09/20/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP (NORDSON)			AFTERGUT, JEFF H	
2700 CAREW TOWER			ART UNIT	
441 VINE STREET			PAPER NUMBER	
CINCINNATI, OH 45202			1733	

DATE MAILED: 09/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/619,069

Applicant(s)

BROCK ET AL.

Examiner

Jeff H. Aftergut

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 3,5-7,12,14,17,19,20,25 and 27-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,8-11,13,15,16,18,21-24 and 26 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10-24-03</u> . | 6) <input type="checkbox"/> Other: ____ |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-27, drawn to a method of intermittently applying discrete elongate segments of adhesive to elastic, classified in class 156, subclass 161.
 - II. Claims 28-33, drawn to an article, classified in class 428, subclass 198.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product could be made by a materially different process such as the application of the discrete adhesive portions onto the substrate followed by association of the elastic onto the substrate.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
5. This application contains claims directed to the following patentably distinct species of the claimed invention: (I) the application of the adhesive onto the elastic

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when the elastic is in either the first position (spaced from the substrate) or the second position. (disposed adjacent the substrate), and; (II) the application of adhesive upon the elastics with a space between the nozzle and the elastic or with the elastic contacting the nozzle at the apex.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 8-10, 15 and 21-23 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

6. During a telephone conversation with Kevin Rooney on September 15, 2005 a provisional election was made with traverse to prosecute the invention of Group I, the species of the elastics being spaced from the substrate and the species of the nozzle being spaced from the elastic, claims 1, 2, 4, 8-11, 13, 15, 16, 18, 21-24, and 26. Affirmation of this election must be made by applicant in replying to this Office action. Claims 3, 5-7, 12, 14, 17, 19, 20, 25, and 27-33 have been withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1, 2, 4, 15, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Werenicz.

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Werenicz suggested that one skilled in the art at the time the invention was made would have applied intermittently discrete elongate segments of adhesive onto an elastic strand for securing the elastic strand to a sheet of material wherein the elastic strands and the sheet of material were moving in a converging manner from a first position in which the elastic strand was spaced from the sheet to a second position where the elastic strand contacted the surface of the sheet. The reference taught that the elongated segments of adhesive were intermittently applied to the strand and the reference additionally taught the contacting of the elongated segments of adhesive, the strands and the sheet with one another when the elastic strand and the sheet were in the second position to secure the strands to the sheet. The applicant is referred Figures 8-10 and the associated description of the figures. The applicant should noted that the reference taught that cobweb like filaments of adhesive 6 were applied upon a plurality of elastics 4 when the elastics were spaced from the substrates 2 and 29 and that the elastics were converged with the substrates 2 and 29 in order to join the assembly together where the adhesive dispensing device 8 was spaced from the elastics 4 by a suitable distance.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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11. Claims 1, 2, 4, 8-11, 13, 15, 16, 18, 21-24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Werenicz in view of either one of Nordson Debuts New Look, New Products at INDEX '99 (from "trends" published by Nordson Corporation for the nonwovens industry, April 1999, hereinafter referred to as Nordson) or Hayder et al.

The reference to Werenicz is discussed at length above in paragraph 9 and applicant is referred to the same for a complete discussion of the reference. The reference taught the use of a spraying device which deposited the adhesive in the form of discrete filaments upon the elastic in an intermittent pattern, however the reference did not suggest that a slot nozzle was utilized in the application of the adhesive in such a dispensing operation. the references to either one of Nordson or Hayder et al expressly show that those versed in the art of adhesive dispensing would have understood that it was known at the time the invention was made to employ a dispenser which included a slot to dispense an adhesive wherein the adhesive being dispensed was in the form of a filament from the dispenser. More specifically, Nordson expressed that the Control Coat operation included a process which applied adhesive through a continuous slot where the adhesive was fiberized and deposited upon the substrate wherein the system included intermittent control of both the air and the adhesive resulting in clean cut off as well as high machine rates. Note that the reference additionally suggested that the applicators would have been provided with suitable die tips in order to provide the specified spray patterns. The reference to Hayder et al suggested that the filamentary adhesive would have been applied out of a slot nozzle

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onto an elastic in the form of a filament. Clearly, one skilled in the art would have known at the time the invention was made to apply the filamentary adhesive from a slot nozzle as such nozzles were known per se for application of fiberized adhesive onto materials wherein the adhesive was applied in fiber form and the adhesive was used to manufacture an absorbent product (note that Werenicz was forming an absorbent product with the filamentary adhesive application onto the elastic) as the reference to Werenicz did not expressly recite the type of nozzle employed in the coating operation and thus it would have been obvious to employ the nozzle arrangements of either one of Nordson or Hayder et al in the operation of Werenicz to assemble the elastics to a substrate wherein the same were adhesively attached in an intermittent fashion.

With regard to the shape of the slot nozzle, one skilled in the art would have readily understood that a slot had a dimension which included a length and a width and that the length was greater than the width in order to form the slot. Such is taken as the conventional shape of the slot. Additionally, the reference to Hayder expressly stated that the slot nozzle could have been disposed such that the length was either in the machine direction or the cross machine direction (i.e. in the direction of the longitudinal extent of the elastics or transverse the same). One skilled in the art viewing Nordson would have determined through routine experimentation the best manner to dispose the slot nozzle described therein and such would have included either in the machine direction or the cross machine direction depending upon the amounts of adhesive to be applied (add on weight) and the speed with which one operated the adhesive application operation.

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Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The reference to PCT '874 suggested that those skilled in the art would have known how to melt blow an adhesive for the bonding of an elastic onto a substrate wherein the adhesive was applied in an intermittent fashion.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff H. Aftergut whose telephone number is 571-272-1212. The examiner can normally be reached on Monday-Friday 7:15-345 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dunn can be reached on 571-272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeff H. Aftergut
Primary Examiner
Art Unit 1733

JHA
September 15, 2005